U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE
WASHINGTON, DC 20515-6415

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December 21, 1987

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

In early February, 1988, the Permanent Select Committee on Intelligence will conduct a hearing on H.R. 3822, the Intelligence Oversight Act of 1987, which I introduced on December 18, 1987. This legislation closely resembles S. 1721, now being considered by the Senate Select Committee on Intelligence, and is a revision of H.R. 1013, which Congressman Boland and I introduced this past February.

At the request of the Committee, Administration witnesses designated by you appeared before the Subcommittee on Legislation on June 10 to testify on H.R. 1013. I now invite you to designate an Administration spokesperson or spokespersons to testify on H.R. 3822 at a date and time early in February which is mutually agreeable.

Sincerely,

LOUIS STOKES
Chairman

Enclosure

of us in this body. The 1985 farm bill provided a framework for the long-range recovery of American farmers and, with a bit of luck and a lot of hard work, we will continue to make progress on the overall agricultural economy.

HR 3822

INTELLIGENCE OVERSIGHT ACT OF 1987

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. STOKES] is recognized for 60 minutes.

Mr. STOKES. Mr. Speaker, today, joined by Mr. MCHUGH, chairman of the Subcommittee on Legislation of the Permanent Select Committee on Intelligence, and Mr. BOLAND, a former chairman of the committee, I am introducing the Intelligence Oversight Act of 1987. This legislation is the culmination of an effort, begun in February of this year, to clarify and revise the important provisions of the National Security Act dealing with congressional oversight of intelligence activities in general and covert actions in particular. At that time, I, the gentleman from Massachusetts [Mr. BOLAND], the gentleman from New York [Mr. MCHUGH], and others, introduced H.R. 1013. The central feature of that bill was a provision explicitly requiring prior notice to the Intelligence Committee of all covert actions, except in extraordinary circumstances where time was of the essence. In such cases notice could be delayed for no more than 48 hours.

This past spring, the Subcommittee on Legislation held 3 days of hearings on H.R. 1013. The subcommittee heard from 12 witnesses, including the Speaker and the minority leader, and received statements or letters from several constitutional scholars and former intelligence officials.

On December 11, Mr. MCHUGH and I appeared before the Senate Select Committee on Intelligence to testify on H.R. 1013 and on oversight provisions proposed by Senators BOREN and COHEN and other members of the Senate Intelligence Committee in Senate bill S. 1721. Both sets of hearings, much discussion at both the member and staff level, and the recommendations of the Iran-Contra Committee have caused Mr. BOLAND, Mr. MCHUGH and I to revise and expand H.R. 1013. These revisions are contained in the bill we introduce today, which, we hope, can be sent to the floor very early next year.

The intelligence oversight legislation we propose today retains the most important element of H.R. 1013—the provision dealing with prior notice of covert action. Recent events demonstrate beyond doubt that existing law in this area will not serve this body well when confronted by an administration willing to evade congressional oversight. Recent events also quite clearly demonstrate that covert actions carried out without prior notice to the Congress and without the advice of the Congress can have devastating results for the Nation and particularly for intrabranch comity.

The history of covert actions is mixed. Many question their utility or wisdom, especially when para-military activities are involved, or when major foreign policy changes are effected. Congress, through its surrogates, the Intelligence committees, must be fully advised of covert action, and it must be advised sufficiently prior to the planned advent of a covert action to permit full consultation. The simple reason for this is that consultation per force replaces the normal public and congressional debate on foreign policy issues. Therefore, the proposed legislation requires prior notice of covert actions in all cases, except in rare instances where the President determines that the press of fast-moving and important events requires immediate action. In such cases, notice to the committee is required no later than 48 hours after the approval of the covert action finding.

My reading of the legislative history of the 1980 Intelligence Oversight Act indicates that when Congress wrote its timely notice provision in section 501(b), in effect recognizing that prior notice may not be provided in all cases, it was thinking only of situations where time would be of the essence and the press of events would not permit the President to notify the intelligence committees of a covert action which he felt it imperative to launch immediately. The Department of Justice, on the other hand, has read that legislative history to mean that the President may withhold notice of covert actions or other intelligence in his discretion for as long as he feels appropriate.

I believe the Iran/Contra Committees rightly judged that these assertions would play havoc with congressional oversight.

When time is of the essence and the President must act, he should act, but 48 hours is certainly a reasonable time within which to subsequently notify Congress in the rare cases where prior action, rather than prior notice, is necessary. This approach, in my view, pays all due deference to the President's constitutional prerogatives by recognizing his duty to respond swiftly in times of crisis. That is why the 48-hour rule was proposed.

As we all know, much of the impetus for this bill comes from the Iran/Contra affair. During the joint committees' investigations, a number of disturbing events were exposed. The most egregious event involved the 10-month delay in notifying Congress of the January 17, 1986 finding on Iran. What the President did in this case was interpret the timely notification language of section 501(b) of the National Security Act to mean that he could delay indefinitely any notice to the Congress of a significant intelligence activity. Subsequent statements by the Department of Justice make clear that, in the view of the President's lawyers, the President was wholly within his rights under the constitution as well as under the oversight statute to act as he did. To let such a view stand uncontradicted, in my view, would mark the beginning of the end of effective congressional oversight of intelligence activities.

Recent events also have re-emphasized the vital importance of the covert action approval process within the executive branch. Therefore, the legislation sets out exactly what must be contained in a covert action finding, requires the finding to be in writing, and prohibits retroactive findings.

Finally, the proposed legislation restructures the general intelligence oversight requirements now contained in the National Security Act and in the Foreign Assistance Act of 1961. What is required and expected of the executive branch and the Congress will be clearly set out in one piece of legislation, and it is made clear that findings are required for all special activities conducted by any element of the U.S. Government or at the request of the U.S. Government and that such findings must be reported to Congress.

Mr. Speaker, I note that very similar legislation is being fashioned this week by a bipartisan majority of the Intelligence Committee of the other body. I hope that the House Intelligence Committee can proceed in the same manner. In the final analysis, the intelligence committees can serve the people and the Congress well only if they are provided the tools with which to conduct effective oversight. The tools are contained in the legislation we propose today. I trust that Members will understand that the ability of the intelligence committees to conduct meaningful oversight may well hinge on the enactment of this bill.

Mr. MCHUGH. Mr. Speaker, I am pleased to join today with Mr. STOKES and Mr. BOLAND in introducing the Intelligence Oversight Act of 1987. This legislation is a crucial step in restoring the bond of comity and confidence between the Congress and the executive branch concerning intelligence matters, and in ensuring that this Nation's vital intelligence activities are conducted wisely, efficiently, and legally—and are supported by the American people.

The comity and confidence to which I refer—and which the drafters of the 1980 Oversight Act knew would be so important in implementing the provisions of that statute—have been largely dissipated by actions of the current administration. Many of these actions were related to the Iran-Contra affair, but others preceded it and it has been clear to the intelligence committees for several years that the administration did not wish, as the law requires, to keep the intelligence committees "fully and currently informed" of intelligence activities.

The legislation which I cosponsor today will make it clear that there is no legal underpinning for such a position. It will rebut a tortured and facile interpretation of existing statutory

and constitutional law recently promulgated by the Department of Justice. It makes clear:

That Presidential findings, which in almost all cases must be in writing, must precede any covert action;

That such findings apply to all covert actions, whether conducted by the CIA or any other U.S. Government entity;

That such findings cannot retroactively ratify previously conducted covert actions;

That requests to other governments or third parties to engage in covert activities on behalf of the United States are to be treated as if the United States was directly involved; and

That the Intelligence Committees, or the "gang of eight" leadership group in rare cases, must be given prior notice of all covert actions—with an exception of not more than 48 hours after a finding is approved in rare circumstances when the President determines the national security requires that he take action before the committees or "gang of eight" can be notified.

Unfortunately, the administration opposes the prior notice provision. In hearings conducted by my Subcommittee on Legislation, the State Department, the CIA, and some former intelligence officials prophesized disaster if the Intelligence Committees had to be given prior notice of covert actions. Yet, that enactment of the Oversight Act of 1980, prior notice has been afforded of all covert actions, except for the one that did result in disaster, the arms sales to Iran.

The administration also claims that the prior notice provision is unconstitutional. In my opinion, the administration is wrong. The Congress, through its powers of the purse, can condition its appropriations in any manner it sees fit—unless such a condition directly interferes with the exercise of a power textually committed solely to the President by the Constitution. This bill contains no such interference, and, by permitting up to a 48-hour delay in notice to Congress when time is of the essence, it insures that the President can sufficiently exercise his constitutional duty to defend the Nation. I would note that others who study these matters more often than I also believe this legislation to be clearly constitutional. In its deliberation on this bill's predecessor, H.R. 1013, the Intelligence Subcommittee heard from Prof. Lawrence Tribe of Harvard Law School, Prof. Louis Henken of Columbia Law School, and Prof. William Van Allstyne of Duke Law School. Each of these constitutional scholars saw no constitutional problem with the prior notice provision.

The proposed legislation permits the President, in "extraordinary circumstances affecting vital interests of the United States," to give the required prior notice to the limited "gang of eight" leadership group rather than to the two intelligence committees. Yet, Mr. Speaker, this is not enough for the administration. It contends that some activities of the U.S. Government are too sensitive to report even to the leaders of the two parties in the House and Senate. If the Congress is to play its legitimate constitutional role in the areas of intelligence oversight and foreign policy formulation, it cannot accept this argument. The Congress does have a need to know—a need demonstratively more crucial than that possessed by the dozens of foreign officials, arms dealers, and NSC staffers who were privy to the Iran-Contra covert action.

Congress needs to know about covert action for oversight purposes, and it needs to know prior to their initiation for consultation purposes, especially in cases such as the Iran covert action where significant foreign policy issues are involved and where consultation with the intelligence committees takes the place of public and congressional debate. Clark Clifford noted this week in testifying on similar legislation before the Intelligence Committee of the other body:

One of the principal shortcomings of the Iran-Contra affair was the failure of the President to notify the intelligence committees of the Government's activities. The oversight process could have served a significant, salutary purpose: giving the President the benefit of the wisdom of those who are not beholden to him, but beholden like him directly to the people, and prepared to speak frankly to him based on their wide, varied experience. Had the President taken advantage of notifying Congress, he and the country may well have avoided tremendous embarrassment and loss of credibility.

Mr. Speaker, I fully agree with Mr. Clifford. This legislation is needed to insure a healthy oversight process and to insure that this Nation's intelligence activities promote rather than hinder the Nation's foreign policy objectives. I urge my colleagues to support it and trust that it can be enacted early in the next session.

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GENERAL LEAVE

Mr. STOKES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore (Mr. PENNY). Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE PROPOSED UNITED STATES-CANADA FREE TRADE PACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. PEASE] is recognized for 60 minutes.

GENERAL LEAVE

Mr. PEASE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. PEASE. Mr. Speaker, let me say to my colleagues that I will take only a couple of minutes. I would like to discuss in these few days as we wind up our session for the year an issue that will be very high on our agenda next year, and that is the proposed United States-Canada Free Trade Pact which has been negotiated and which is due to be submitted by the administration to the Congress on January 1.

It seems to me that some miscalculations have been made and are in the process of being made regarding congressional approval of this United States-Canada Free Trade Pact. Most of us adhere and support free trade as a general principle. Canada has long been one of the great allies of the United States, certainly a great friend of the United States. We share the world's longest unguarded border. Canada also has been a major trading partner of the United States, and we have had a long and mutually advantageous trading relationship with Canada.

Thus it made sense a couple of years ago when Mr. Mulroney, the Prime Minister of Canada, made the suggestion that we ought to try to negotiate the removal of all barriers to trade or at least almost all barriers to trade between the United States and Canada. That provision has been worked out. As I say, the administration is due to submit it to Congress in just a few weeks.

Mr. Speaker, my concern is that the agreement which has been negotiated between the United States and Canada does not adequately address American concerns about one of the key elements, indeed the largest element of trade between the United States and Canada, and I refer to the automobile trade. We have had an auto pact with Canada for a number of years which treats automobiles as items that can go back and forth across the border, along with parts, without being subject to tariffs.

Many people in the United States feel that the original pact negotiated with Canada regarding automobiles was unduly favorable to the Canadians. That must be also the opinion of Canadians because during the negotiations last year the Canadians were adamant about not wanting to revise or revisit that Canadian-United States-North American Auto Pact. That is all well and good. I think that was a mistake. We should really have negotiated it. But certainly considering the fact that we are going to establish free trade on a broad range of products with Canada, we ought to revisit one particular issue, and that is the standard of preference, if you will, the North American content requirement of automobiles that gain free access to the U.S. market. Currently that standard is 50 percent. U.S. negotiators attempted to make that 60 percent so that automobiles ostensibly assembled in Canada and coming to the United States would have at least half of their content coming from North America rather than from the Far East.

There is great concern, let me say, among those of us who have large concentrations of automobile workers and auto factories with the possibility that this new United States-Canada Free Trade Pact will result in automobile products coming into the United States which essentially are used by the Far Eastern nations, Japan, Korea, Taiwan, Singapore, Hong